

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070344
	:	TRIAL NO. B-0603744
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
BEAU TSCHAINER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, defendant-appellant Beau Tscheiner was convicted of sexual battery.² We note, however, that the trial court’s sentencing entry inaccurately reflects that Tscheiner had “pleaded guilty” to the offense.

Tscheiner now appeals. In his first, second, and third assignments of error, he challenges the weight and sufficiency of the evidence upon which his conviction was based, as well as the trial court’s denial of his Crim.R. 29 motion for an acquittal.

Following our review of the record, we hold that the state presented sufficient evidence of sexual battery. The 15-year-old victim testified that she had been drunk after consuming numerous shots of rum and other alcohol when, despite her protestations, Tscheiner placed his finger in her vagina and then had intercourse with her. In a statement to police, Tscheiner corroborated the victim’s account of the crime and admitted that he had known the victim was intoxicated. And a sexual-assault nurse examiner testified that the victim had sustained injuries to her genitalia that were consistent with forced penetration. The trier of fact could have reasonably found that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2907.03(A)(2).

Tscheiner had engaged in sexual conduct with the victim when he knew that her ability to appraise the nature of, or to control, her own conduct was substantially impaired.³

And we cannot say that the trial court lost its way or created a manifest miscarriage of justice in finding Tscheiner guilty of the offense.⁴ So we overrule the first, second, and third assignments of error.

In his fourth assignment of error, Tscheiner argues that defense counsel was ineffective for failing to cross-examine the victim. But trial counsel need not cross-examine every witness, and counsel's decision to forego cross-examination is committed to counsel's judgment.⁵ Here, defense counsel may have chosen to avoid having the victim's damaging testimony repeated during her cross-examination. And counsel's attempts to cast doubt on the victim's account may have backfired, especially where Tscheiner's statement to police had largely corroborated the victim's account of the offense. Because Tscheiner has failed to demonstrate that counsel's performance was deficient, he cannot show that he was denied the effective assistance of counsel.⁶ We overrule the fourth assignment of error.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 7, 2008

per order of the Court _____.

Presiding Judge

³ See *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus; *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

⁴ See *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁵ *State v. Campbell*, 90 Ohio St.3d 320, 339, 2000-Ohio-183, 738 N.E.2d 1178, quoting *State v. Otte*, 74 Ohio St.3d 555, 565, 1996-Ohio-108, 660 N.E.2d 711.

⁶ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.2d 136, 538 N.E.2d 373, paragraph two of the syllabus.